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BRANNER *v.* BRANNER'S ADM'R.

Nov. 19, 1908.

[62 S. E. 952.]

1. Account (§ 17*)—Amendment of Bill.—A general bill for an account may, on a stated or settled account being set up in bar, and being shown, be amended, on leave, to surcharge and falsify the stated or settled account.

[Ed. Note.—For other cases, see Account, Dec. Dig. § 17.*]

2. Account (§ 15*)—Laches.—A suit to surcharge or falsify a stated or settled account is not barred by laches, being brought within three years after the settlement; the amount and character of the error being clearly established, and there being no loss of evidence likely to produce injustice.

[Ed. Note.—For other cases, see Account, Cent. Dig. § 72; Dec. Dig. § 15.*]

3. Appeal and Error (§ 273*)—Absence of Exceptions.—In the absence of exceptions to the report of the commissioner on the ground of his failure to make certain allowances, defendant cannot complain thereof on appeal by complainant from the dismissal of the bill on exceptions to such report.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 1620; Dec. Dig. § 273.*]

CRANE'S NEST COAL & COKE CO. *v.* VIRGINIA IRON,
COAL & COKE CO. et al.

Nov. 19, 1908.

[62 S. E. 954.]

1. Mines and Minerals (§ 55*)—Notice—Evidence—Sufficiency.—Evidence held insufficient to show that defendant and its predecessors acquired title to coal under land with notice of plaintiff's rights thereto.

[Ed. Note.—For other cases, see Mines and Minerals, Dec. Dig. § 55.*]

2. Vendor and Purchaser (§ 242*)—Purchasers for Value—Notice—Burden of Proof.—The burden to prove notice to a purchaser for value is on the party alleging it, and, while notice may be inferred from circumstances as well as proved by direct evidence, the proof must be such as to affect his conscience, and so clear as to show mala fides.

[Ed. Note.—For other cases, see Vendor and Purchaser, Dec. Dig. § 242.*]

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

3. Specific Performance (§ 43*)—Oral Contract to Convey—Part Performance.—That the purchaser of land under a verbal contract delivered a horse to the vendor, and cleared a small tract upon which he sowed crop, rented part of the land, and built a brush fence around the clearing, etc., does not show such part performance as entitled him to specific performance, since adequate compensation may be had in damages.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 135, 136; Dec. Dig. § 43.*]

4. Specific Performance (§ 41*)—Verbal Contract to Convey—Part Performance.—To be subject to specific performance because partly performed a verbal contract to convey must be clear in its terms and clearly proven, the acts of part performance must result from the agreement proved, and the agreement must be so far executed that a refusal of full execution would operate a fraud on plaintiff, and deprive him of compensation.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 120, 121, 124, 129, 133; Dec. Dig. § 41.*]

HAMILTON'S ADM'X *v.* ALLEGHANY ORE & IRON CO.

Nov. 19, 1908.

[62 S. E. 957.]

Master and Servant (§ 118*)—Injuries to Servant—Mining—Falling Stones—Timbering—Safe Place.—In an action against a master for injuries to a miner, held, that defendant's failure to extend the timbering over the place where decedent worked was not negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 209; Dec. Dig. § 118;* Mines and Minerals, Cent. Dig. § 219.]

MILTON'S ADM'X *v.* NORFOLK & W. RY. CO.

Nov. 19, 1908.

[62 S. E. 960.]

1. Appeal and Error (§ 614*)—Record—Certification of Evidence—Sufficiency.—Where a bill of exceptions recited that defendant demurred to the evidence set forth, followed by the words "Here insert stenographer's transcript of the evidence," and where the judge certified that that was the evidence and the bill of exceptions was signed

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.